



MEMBERS
 Fred Bosse
 Susan Combs
 Scott Hochberg
 Ron Lewis
 Pedro Nieto
 Robert Puente
 Bob Turner
 Jerry Yost

COMMITTEE ON NATURAL RESOURCES

DAVID COUNTS
 CHAIRMAN

VICE CHAIRMAN
 Jack Harris
 OVERSIGHT
 CHAIRMAN
 Bob Turner
 WATER
 DISTRICTS
 Fred Bosse
 FINANCE
 Sherri Greenberg
 CHIEF CLERK
 Shayne Woodard

RQ-700

May 13, 1994

The Honorable Dan Morales
 Attorney General of Texas
 P.O. Box 12548
 Austin, Texas 78711-2548

FILE # ML-26412-94
 I.D.# 26412

RECEIVED
 MAY 17 94
 Opinion Committee

Dear Attorney General Morales:

I am requesting an Opinion from your office regarding a question regarding § 54.755 (b) of the Texas Water Code, referred to my office by Representative Scott Hochberg. Representative Hochberg has previously been in contact with Jim Pinson in your office regarding this matter.

The specific question raised is: Is the recreational fee authorized by § 54.774 (b) of the Texas Water Code a mandatory fee that the district can levy upon all its customers and enforce through civil suits, or is this a fee that the district can only levy upon actual users of the recreational facilities?

I have enclosed copies of all of the resource matters supplied to my office by Representative Hochberg's office. If you have any questions or need any additional information, please do not hesitate to contact my office.

I appreciate your assistance in this request.

Sincerely,

David Counts
 State Representative

DC/jkb
 encl.

cc. The Honorable Scott Hochberg

The State of Texas
House of Representatives



P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0492

Scott Hochberg
DISTRICT 132

4660 BEECHNUT, #200A
HOUSTON, TEXAS 77096
713-660-7783

April 20, 1994

The Honorable David Counts
Chairman, Natural Resources Committee

Dear Representative Counts:

Mr. Paul Scott, a Harris County resident of mine, has requested that we seek an Attorney General's Opinion on a recreation fee authorized by § 54.755 (b) of the Texas Water Code. I have enclosed the letter he sent along with the pertinent code as well as a copy of his community association's Motion for Rehearing.

My staff has been in contact with Mr. Jim Pinson, an attorney in the Attorney General's Opinion Division. He believes that Mr. Scott's request is sufficiently different enough from the Natural Resources Committee's existing request concerning stand-by fees to require a separate opinion.

I appreciate you taking your time in considering this request for an Attorney General's Opinion.

Sincerely,

A handwritten signature in cursive script that reads "Scott Hochberg".
Scott Hochberg

2103 Knollbrook
Spring, TX 77373
January 30, 1994
350-1040(h) 755-4492(w)

Hon. Scott Hochberg
4660 Beechnut #200A
Houston, TX 77096

Dear Representative Hochberg:

Thank you for agreeing to entertain my proposal for a Request for an Attorney General's Opinion on the Recreation Fee authorized by § 54.755(b) of the Texas Water Code. Before calling you on the 11th I had discussed this matter with Mr. Patrick King of the Texas Natural Resources Conservation Commission and with Tony Shepherd. Both spoke well of you and Mr. King graciously offered to answer any questions you may have of this issue.

I am hoping that a considered, third party opinion on this matter will end a controversy that has cost both my homeowners association and WCID #92 probably over \$200,000 for appeals to the TNRCC. The next step seems to be an expensive civil suit unless we can get an alternative means of settling.

THE QUESTION

Is the recreation fee authorized by § 54.774(b) of the Water Code a mandatory fee that the district can levy upon all its customers and enforce through civil suits? Or is this a fee that the district can levy only upon actual users of the recreational facilities?

THE LAW

Section 54.774(b) of the code states:

Except as provided in Subsection (a) of this section, a district may acquire recreational facilities and obtain funds to develop and maintain them in the same manner as authorized elsewhere in this code for the acquisition, development, and maintenance of other facilities in the district. Without limiting the foregoing, a district may charge fees directly to the users of recreational facilities to pay for all or part of the cost of their development and maintenance. (see Attachment A)

Particularly relevant to this is § 54.204(c) which provides:

A district may discontinue a facility or service to prevent an abuse or enforcement payment of an unpaid charge, fee, or rental. . . . (see Attachment B)

Section § 54.203 may be relevant to my question even though it seems to have best a tenuous relevance. It provides that:

A district is authorized to . . . establish a solid waste collection and disposal system. . . . A district may require use of such services as a condition for receiving other district services. (see Attachment C)

MY INTERPRETATION

I believe that a water district may charge the Recreation Fee only to actual users of the recreational facilities. The legislature chose to use the word "user." It did not use "customer," "potential user," "property owner," or any other word that would include anyone except actual users. The legislature, furthermore, did not include a special definition of the word "user."

The Code Construction Act provides:

(a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage."

Since the normal definition of a "user" is "one who uses," it is my understanding, that the district is entitled to collect its Recreation Fee from only actual users.

For more arguments on this matter, see Attachment D, pages D-3 & D-4.

WHY I'M ASKING THIS QUESTION

I am a resident of Lexington Woods North (LWN) a subdivision in Spring that, with the larger Lexington Woods, composes the bulk of Water Control and Improvement District #92.

My neighbors in Lexington Woods North and I, own and support a 14 acre park with a swimming pool, tennis courts, and ball fields paid for by maintenance fees paid to the Lexington Woods North Homeowners' Association.

The WC&ID #92 Board of Directors consists of four residents of Lexington Woods and one who lives in Lexington Woods North. The one LWN resident was a long time resident of Lexington Woods, still owns property there, and once owned stock in The Cabana Club, a privately owned stock recreational facility in Lexington Woods.

In 1991 WC&ID #92 took over two recreational facilities in Lexington Woods, including the financially troubled Cabana Club. These facilities duplicate the pre-existing services offered by the Lexington Woods Community Association in violation of the spirit (if not the letter) of § 54.774 of the Water Code.

To prevent the recreational facilities from ever becoming part of the City of Houston's Parks Department (and a public park), the District entered into a lease arrangement so that when the district is annexed (or sooner) control of the facilities will revert to the actual owners--complete with improvements and all associated district personal property. (see Attachments E & F)

There is no provision in the lease for non-owners to have any right of continued access to the recreational facilities after control reverts to the owners.

These recreational facilities are not "public recreational facilities" as the term is usually construed. They are open only to district residents and their guests. Apparently unique in Texas, there is no provision for a member of the general public to use these facilities.

The district assesses each water customer \$8.15 a month to support the recreational facilities. This results in a transfer of \$40,000 a year from the residents of Lexington Woods North to support recreational facilities in Lexington Woods--facilities in which we have no property interest and few of us use. (Even most of the users have done so only because they were paying a mandatory assessment.)

The district intends to use the public funds they collect for capital improvements of privately owned facilities and for social activities. (They spent nearly \$4,000 on a beer and BBQ party in 1991.) They spend over \$10,000 a year on a monthly newsletter that they use for propaganda purposes and refuse to print any responses from the opposition. (See Attachment G)


The Lexington Woods North Homeowners Association has appealed this matter to the Texas Natural Resources Commission. After spending over \$100,000 on this appeal the TNRCC has decided it has no jurisdiction. At one point the TNRCC (then the Texas Water Commission), at the request of the district, issued an opinion that the district could make Lexington Woods North a separate rate class. The district backed off that proposal because one of the directors became involved in a personal altercation with a small, female resident of Lexington Woods North who subsequently filed assault charges against him. (He was acquitted of criminal after mounting a vigorous, and expensive, legal defense.) (See Attachment G)

Throughout the appeal the attitude of the Board of Directors towards Lexington Woods North has deteriorated from indifference to hostility.

To head off the probability of spending more money on this issue, my neighbors and I want a neutral third part (preferably the Texas Attorney General) to render an opinion on this matter so that both sides will have a better idea of who has the law on their side. Although I am acting independently in this matter, it is with the knowledge and support of my homeowners association which has the support of the vast majority of the nearly 400 families in our subdivision.

Even though we are not among of your constituents, I hope that you will use your good offices to help us resolve this matter. We know that justice is on our side; what we (and the district) needs to know is if the law is on the side of justice.

Respectfully,


Paul R. Scott

Attachments: A. Section 54.771-775 of the Water Code
 B. Section 54.204 of the Water Code
 C. Section 54.203 of the Water Code
 D. Motion for Rehearing, January 6, 1994
 E. Letter from Patrick King, June 23, 1992
 F. Letter from Tim Green, July 9, 1992
 G. Letter to Paul Scott, September 22, 1992 (with
 relevant attachments.
 H. TNRCC Order dated December 15, 1993 (see p. H-
 8)